

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 2994 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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RAMESHBHAI SHIVABHAI PATEL - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR AD SHAH for Applicant(s) : 1,
Ms. Archana Raval, A.P.P. for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 30/07/2007

ORAL JUDGMENT

1. This Criminal Revision Application filed under Section 397
read with Section 401 of the Criminal Procedure Code is directed

against the order dated 13th November, 1995 passed by the learned Additional Sessions Judge below application Exh.79 in Criminal Case no.2/90 whereby the learned Sessions Judge rejected the application of the present petitioner-original accused no.2 seeking to forward the "Reference" sample of Zinc Sulphate to the Central Fertilizer Quality Control Institute, NH4 Faridabad, Haryana.

2. The facts leading to the institution of the present Revision Application are that the respondent no.2-(original complainant)-Laljiram Pujiram Patel, Agricultural Inspector, Modasa, had visited Megharaj Taluka Kharid Vechan Sangh Ltd. On 24th June, 1989 and took samples of zinc sulphate for analysis from the stock of zinc sulphate found there. The respondent no.2 prepared three samples of zinc sulphate in consonance with the provisions of the Fertilizer (Control Order), 1985 out of which, as required under the Rules one sample was handed over to the accused-Manager of Mehgaraj Taluka Kharid Vechan Sangh Ltd., the second sample was sent to the State Laboratory for analysis and the third sample was retained with the respondent no.2 and was produced before the Court at the time of his deposition recorded at Exh.18. This sample is given Exh.34.

3. The report of the sample sent to the State Laboratory at Gandhinagar is produced at Exh.22, according to which, the zinc content is 18.30% whereas according to prescribed parameters, the zinc content should have been 21% or more. According to the respondent no.2, he had taken one more sample on the day when

he took samples and the same was also forwarded to the Laboratory at Gandhinagar, the report in respect of which showed zinc content of 18.56 % in place of the prescribed standard of 21% or more. According to the respondent no.2, the present petitioner is the manufacturer of the said zinc sulphate and hence, the respondent no.2 issued notice to the present petitioner which was replied by the present petitioner. Thereafter, the respondent no.2 obtained the necessary sanction for prosecution from the Director of Agriculture and lodged complaint against the present petitioner-M/s Sweta Chemical Industries, Mehsana, and its partners which came to be registered as Criminal Case no.2/1990. The present-petitioner-original accused no.2 preferred an application Exh.79 in the said case before the trial Court seeking to forward the "Reference" sample produced by him before the Court during his deposition to the Central Fertilizer Quality Control Institute, NH4 Faridabad, Haryana. The reply was filed by the learned A.P.P. at Exh.83. The learned Additional Sessions Judge, Sabarkantha at Himatnagar, after hearing the learned Counsel for the parties, and taking consideration the material placed before him, by its order dated 13th November 1995 below Exh.79 rejected the said application of the present petitioner, giving rise to the present Revision Application.

4. Heard Mr. A.D.Shah, learned Counsel for the petitioner and Ms.Archana Raval, learned A.P.P. For the respondents nos.1 and 2.

5. Learned Counsel Mr. A.D.Shah submitted that the present

petitioner firm had also got sample analyzed by Italab Pvt.Ltd., a Government approved Laboratory and Env.Engineers. According to the learned Counsel, the report of analysis received from Italab Pvt. Ltd., showed zinc content of 21.29% whereas the report of Env.Engineers showed zinc content of 21.20%. It is the submission of the learned Counsel that since the report of both these Laboratories show that the zinc contents in the sample are as per the prescribed standard and when "Reference" sample is collected by the respondent no.2-complainant and produced before the Court, it is the right of the present petitioner-original accused to claim that the "Reference" should be sent to the Central Fertilizer Control Institute, NH4 Faridabad, Haryana.

6. Learned Counsel for the petitioner next submitted that under Order 29, Part VIII of Fertilizer (Control) Order 1985, the sample of fertilizer drawn by an Inspector shall be analyzed in accordance with the instructions contained in Schedule II in the Central Fertilizer Quality Control and Training Institute or in any other Laboratory notified for this purpose by the State Government and Part VI Schedule II thereof provides for preparation of test sample and "Reference sample " and it clearly provides that the third sample shall constitute the "Reference sample" and shall be sent by the Inspector to his next higher authority with a view to keeping the same in safe custody for production in Court. According to the learned Counsel, in this case, the complainant did not forward the said sample to his next higher authority and directly produced the

same in the Court at the time of his deposition. The learned Counsel, however, fairly admitted that there is nothing in Fertilizer (Control) Order, 1985 which calls for analysis of the "Reference sample" at the request of the accused, but when the Fertilizer (Control) Order treats the third sample as "Reference sample" and when the dictionary meaning of the word "Reference" is "appeal to the judgment of another", and more particularly, when there are reports from two Laboratories one of which showed the contents of zinc as per prescribed standards,, despite the fact that there is no provision in the Fertilizer (Control) Order, 1985, for fair trial and in the interest of justice, the sample should be sent to another Laboratory.

7. It is also the submission of the learned Counsel for the petitioner-accused that the learned Sessions Judge had decided the application preferred by the accused after two and a half years, and therefore, the present petitioner-accused cannot be blamed for the delay that has occurred as the delay is on the part of the Court.

8. This Court has gone through the order dated 13th November, 1995 passed by the learned Sessions Judge below Exh.79 in Criminal Case no.2 of 1990. It transpires from the order that sample was collected in 1989 and the evidence of the complaint was recorded and closing Plea was also filed by the prosecution side since long. The deposition of the accused as defence witness was recorded on 18th August, 1993 and matter was kept for arguments and the said application was submitted by the applicant

after a pretty long time, even though, it was within the knowledge of the accused much earlier that the report was received from the State Laboratory by the complainant and that the sample was found to be of inferior quality. If the accused was serious about this report or if he desired to challenge the same, then the accused ought to have approached the Court at an earlier point of time and claimed the relief sought for by him. The accused has failed to do so, and the learned Sessions Judge, in the opinion of this Court, has rightly held that only for the purpose of prolonging the matter, the accused has submitted the application. That apart, there is no provision in the Gujarat Fertilizer (Control) Order, 1985 with regard to sending of third sample to another Laboratory at the instance of the accused. The learned Additional Sessions Judge has held that when there is no provision in the Act, then accused cannot ask for sending the third sample to another Laboratory. It was further held by the learned Sessions Judge that in respect of the reports of fertilizer obtained by the accused as also the report of fertilizer produced by the complainant before the Court, the analysis were carried out by the State Laboratory and in case of any variations or differences in the report, the question can be raised while deciding the main matter. Merely because there is difference in the report of different Laboratories, the accused cannot claim absolute right for sending the sample to another Laboratory. I am, therefore of the view that the learned Additional Sessions Judge is perfectly justified in passing the order dt.13th

November, 1995 below Exh.75 in Criminal Case no.2/1990 rejecting the application of the accused.

9. It is pertinent to note here that, in the present case, samples were collected in 1989 and application was preferred on 20th October, 1993, and thereafter this Revision is preferred before this Court. Even taking into consideration this delay, now no useful purpose will be served, by directing the samples to be sent to another Laboratory.

9. Learned Counsel Mr. A.D.Shah for the petitioner had cited the following authorities in supports of his submission- (1) State of Haryana v. Unique Farmaid (P)Ltd. ((1999) 8 Supreme Court Cases 190, (2) Ajay Kumar v. State of Punjab (2006(1)FAC 245, (3) Tarsem Singh v. Union of India & Others, ((1996(2) FAC 283, (4) Sadhan Sahkari Samiti Ltd and another v. State of U.P. and others , 1998(2) FAC 38, (5) State of Punjab v. National Organic Chemical Industries Ltd., ((1996) 11 SCC 613, (6) Amery Pharmaceuticals and Another v. State of Rajasthan, (AIR 2001 SC 1303. Having gone through these authorities, I am in complete agreement with the ratio laid down by the Supreme Court as well as the High Court therein, however, in view of my findings as discussed above, none of these authorities can be made applicable to the facts of the present case.

11. In the result, the Revision fails and is dismissed. However, the trial Court concerned is directed to dispose of the Criminal Case no.2/1990 pending before it as early as possible and preferably

within two months from the date of receipt of the writ of this Court.

(M.D.Shah,J.)

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Further order:

After pronouncement of this judgment, Mr. A.D.Shah, learned Advocate for the petitioner requests for stay of operation of this order so as to enable the petitioner to approach the higher forum.

On the facts and in the circumstances of the case, the request is required to be accepted. Hence, operation of this order is stayed for a period of six weeks.

(M.D.Shah,J.)

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